

APPENDIX

Signed by Governor
(July 17, 1989)

H.C.R. 2

H.C.R. 5

H.C.R. 11

H.C.R. 25

Sent to Governor
(July 18, 1989)

S.C.R. 2

S.C.R. 17

S.B. 27

S.B. 29

S.B. 32

S.B. 57

S.B. 67

S.B. 80

EIGHTEENTH DAY
(Wednesday, July 19, 1989)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Edwards, Glasgow, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejada, Truan, Uribe, Whitmire, Zaffirini.

Absent: Washington.

Absent-excused: Dickson, Green.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Almighty Father, we are taught and believe that strength and agility come from exercise, both mental and physical. We submit that this legislative body is stronger and wiser today, having exercised itself these past months wrestling with issues that require alertness, expert leadership and studied decisions. Thank You for these who stand steady in debate and are challenged to defend their respective and respected positions.

Now on this last day of the First Called Special Session of the 71st Legislature, we pray for adjournment on a note of harmony and a finished work product that is worthy of the labors of the many who have contributed.

In Jesus' name. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVES OF ABSENCE

Senator Dickson was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Green was granted leave of absence for today on account of important business on motion of Senator Brooks.

BILL SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bill:

S.B. 20**REPORT OF STANDING COMMITTEE**

Senator McFarland submitted the following report for the Committee on Criminal Justice:

C.S.H.B. 65**SENATE BILLS ON FIRST READING**

The following bills were introduced, read first time and referred to the Committee indicated:

S.B. 105 by Zaffirini Health and Human Services
Relating to a salary supplement for the administrator of the Laredo-Webb County Health Department.

S.B. 106 by Brown Criminal Justice
Relating to the issuance of an operator's license to persons convicted of a misdemeanor offense under the Texas Controlled Substances Act.

**EDUCATION COMMITTEE GRANTED
PERMISSION TO MEET**

On motion of Senator Parker and by unanimous consent, the Education Committee was granted permission to meet while the Senate was in Session.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Parker and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Education might consider **H.B. 126** immediately today.

GUEST PRESENTED

Senator Tejada was recognized and presented Dr. J. Howard Fredrick of San Antonio.

Dr. Fredrick, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was welcomed by the Senate and received an expression of gratitude for his service today.

BILLS SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills:

**H.B. 26
H.B. 94****HOUSE BILL 82 ON THIRD READING**

On motion of Senator Johnson, on behalf of Senator Washington, and by unanimous consent, the regular order of business and Senate Rule 7.26 were

suspended to take up for consideration at this time on its third reading and final passage:

H.B. 82, Relating to student center fees charged and collected by Texas Southern University.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0.

Absent: Washington.

Absent-excused: Dickson, Green.

RECESS

On motion of Senator Brooks, the Senate at 10:22 a.m. took recess until 5:00 p.m. today.

AFTER RECESS

The Senate met at 5:00 p.m. and was called to order by the President.

SENATE RESOLUTION 202 (Caucus Report)

Senator Brooks offered the following resolution:

Honorable William P. Hobby
President of the Senate
Austin, Texas

Sir:

At a caucus held on July 19, and attended by 26 Members of the Senate, the following recommendations were made, to wit:

BE IT RESOLVED by the Senate, That:

The Lieutenant Governor may employ such employees as are necessary for the operation of his office from the closing of this session and until the convening of the next session, and in addition thereto, he and the Secretary of the Senate shall be furnished postage, telegraph, telephone, express, and all other expenses incident to their respective offices.

The Secretary of the Senate shall be retained during the interval between adjournment of this session and the convening of the next session of the Legislature. The Secretary of the Senate may employ such employees as are necessary for the operation of her office and to perform duties as may be required in connection with the business of the state from the closing of this session and until the convening of the next session. All employees and elected officers of the Senate shall operate under the direct supervision of the Secretary of the Senate during the interim.

The Administration Chairman is authorized to retain a sufficient number of staff employees to conclude the work of the Enrolling Clerk, Calendar Clerk, Journal Clerk, and Sergeant-at-Arms. The Committee on Administration shall establish the salaries to be paid the Senate staff.

The Chairman of the Senate Committee on Administration is hereby authorized and directed to cause the Senate Chamber to be placed in order and to purchase such supplies and to make all such repairs and improvement as are necessary between the adjournment of this session and the convening of the next session of the Legislature and make an inventory of all furniture and fixtures in the Senate Chamber and in the private offices of the Members, as well as of the supplies and equipment on hand in the Purchasing and Supply Department and close his books for the 1st Called Session of the 71st Legislature. No equipment shall be

acquired on a rental/purchase plan unless such equipment be placed on the Senate inventory at the termination of such plan. He shall also examine records and accounts payable out of the Contingent Expense Fund as shall be necessary properly to approve all claims and accounts against the Senate, and no claim or account shall be paid without his consent and approval, and he and any member of the Administration Committee shall be entitled to receive his actual and necessary expenses incurred during the interim; and, be it further

RESOLVED, That there shall be printed 325 volumes of the Senate Journal of the 1st Called Session of the 71st Legislature; when complete 250 copies shall be bound in buckram and delivered to the Secretary of the Senate; one volume thus bound shall be forwarded by the Secretary of the Senate to each Member of the Senate, the Lieutenant Governor, and to each Member of the House of Representatives on request. The printing of such journals shall be done in accordance with the provisions of this Resolution under the supervision of the Chairman of the Committee on Administration; provided, further, that it shall be the duty of said chairman to refuse to receive or receipt for said Senate Journals until corrected and published in accordance with the preexisting law as finally approved by the Chairman of the Committee on Administration of the Senate. When the accounts have been certified by the Chairman of the Committee on Administration of the Senate, said accounts shall be paid out of the Contingent Expense Fund of the 71st Legislature; and, be it further

RESOLVED, That all salaries and expenses herein authorized to be incurred and paid for shall be paid out of the per diem and Contingent Expense Fund of the 71st Legislature as follows: The Senate shall request the State Comptroller of Public Accounts to issue general revenue warrants for payment of the employees of the Lieutenant Governor's office, the Lieutenant Governor, Members of the Senate, employees of the Senate committees, and employees of the Senate, except as provided in Section 20 of the Legislative Reorganization Act (Article 5429f, Vernon's Texas Civil Statutes), upon presentation of the payroll account signed by the Chairman of the Administration Committee and the Secretary of the Senate; and for the payment of materials, supplies, and expenses of the Senate, including travel expenses for Members and employees, upon vouchers signed by the Chairman of the Senate Committee on Administration and the Secretary of the Senate; and, be it further

RESOLVED, That in furtherance of the legislative duties and responsibilities of the Senate, the Administration Committee is hereby authorized and directed to charge to the individual Member's office budget as hereinafter authorized: (1) reimbursement of all actual expenses incurred by the Members when traveling in performance of such duties and responsibilities or incident thereto, and (2) payment of all other reasonable and necessary expenses for the operation of the office of the individual Senator during any period the Legislature is not in session. Expenditures for these services by the Administration Committee as hereby authorized as an expense of the Senate shall not be restricted to Austin but may be incurred in individual senatorial districts. Such expenses shall be paid from funds appropriated for the use of the Senate on vouchers approved by the Chairman of the Administration Committee and the Secretary of the Senate in accordance with regulations governing such expenditures; and, be it further

RESOLVED, That for the time period from the end of the 71st Legislature, 1st Called Session, until the convening of the next regular or special session, each Senator shall be permitted to employ secretarial and other office staff and for intrastate travel expenses for staff employees a payroll of \$15,500.00 per month. Any unexpended portion of this amount may be carried forward from month to month until the end of the fiscal year. Other expenses, including travel expenses or other reasonable and necessary expenses incurred in the furtherance and

performance of legislative duties or in operation of his office or incident thereto, shall be provided in addition to the maximum salary authorized.

In order to accrue vacation leave, compensatory/overtime leave, or sick leave, employees of Members must file monthly time sheets with the Senate Personnel Office by the 10th of the month following the month in which work was performed. Employees of Members and committees must use compensatory/overtime accrued in a given month by the end of the same month of the following year. Compensatory/overtime accrued prior to January 1, 1989, will not be carried forward after January 1, 1990. No compensatory/overtime will be paid at either the end of the fiscal year or at an employee's termination; and, be it further

RESOLVED, That the Lieutenant Governor shall have the authority to appoint any Member of the Senate, the Secretary of the Senate, or other Senate employee to attend meetings of the National Conference of State Legislatures and other similar meetings. Necessary and actual expenses are hereby authorized upon the approval of the Chairman of the Administration Committee and the Secretary of the Senate; and, be it further

RESOLVED, That each of the standing committees and subcommittees of the Senate of the 71st Legislature be authorized to continue to meet at such times and places during the interim as determined by such committees and subcommittees and to hold hearings, recommend legislation, and perform research on matters directed either by Resolution, the Lieutenant Governor, or as determined by majority vote of each committee. Each continuing committee and subcommittee shall continue to function under the rules adopted during the legislative session where applicable. Expenses for the operation of these committees and subcommittees are hereby authorized to be paid pursuant to a budget prepared by each committee and approved by the Administration Committee; and, be it further

RESOLVED, That the operating expenses of this committee shall be paid from the Contingent Expense Fund of the Senate, and the committee members shall be reimbursed for their actual expenses incurred in carrying out the duties of the committee.

Any members not returning for the 72nd Legislature will vacate their Senate offices by December 15, 1990; and, be it further

RESOLVED, That no employee of the Senate shall during the time he or she is employed furnish to any person, firm, or corporation any information other than general information furnished the public pertaining to the Senate, and they shall not without permission receive any compensation from any person, firm, or corporation during their employment by the Senate, and any employee found guilty of violating this provision shall be immediately discharged; and, be it further

RESOLVED, That the Secretary of the Senate is specifically directed not to permit the removal of any of the property of the Senate from the Senate Chamber or the rooms of the Senate except as authorized by the Chairman of the Administration Committee.

Respectfully submitted,

/s/Chet Brooks
Chet Brooks
Chairman of the Caucus

/s/Carlos F. Truan
Carlos F. Truan
Secretary of the Caucus

The resolution was read and was adopted viva voce vote.

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Parker submitted the following report for the Committee on Education:

H.B. 126**HOUSE BILL 126 ON SECOND READING**

On motion of Senator Haley and by unanimous consent, the regular order of business and Senate Rules 7.13 and 7.26 were suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 126, Relating to alcohol and drug abuse education for public school students and teachers.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 126 ON THIRD READING

Senator Haley moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 126** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Dickson, Green.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Dickson, Green.

**ELECTION OF PRESIDENT PRO TEMPORE
AD INTERIM, 71ST LEGISLATURE**

The President announced the time had arrived for the election of the President Pro Tempore Ad Interim, 71st Legislature.

On motion of Senator Brooks, Senator James E. (Buster) Brown of Lake Jackson was elected President Pro Tempore Ad Interim by acclamation.

The President administered the Oath of Office to Senator Brown, who announced that his "Governor for a Day" ceremony would be held in Austin on October 21, 1989, and extended an invitation to the Members to attend.

BILLS AND RESOLUTION SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolution:

H.B. 82

H.B. 131

H.C.R. 35

RECESS

On motion of Senator Brooks, the Senate at 5:16 p.m. took recess until 7:00 p.m. today.

AFTER RECESS

The Senate met at 7:00 p.m. and was called to order by the President.

RECESS

On motion of Senator Brooks, the Senate at 7:18 p.m. recessed until 9:00 p.m. today.

AFTER RECESS

The Senate met at 9:00 p.m. and was called to order by the President.

SENATOR ANNOUNCED PRESENT

Senator Dickson, who had previously been recorded as "Absent-excused", was announced "Present."

MESSAGE FROM THE HOUSE

House Chamber
July 19, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 5, Granting Glenn H. Johnson, John Neale and Roberto Pensotti permission to sue the State of Texas and the Parks and Wildlife Department.

H.C.R. 36, Commending Gregory Scott Graham.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

**COMMITTEE SUBSTITUTE
HOUSE BILL 65 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business and Senate Rules 7.13 and 7.26 were suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 65, Relating to the forfeiture and disposition of certain property related to enumerated felony offenses.

The bill was read second time.

Senator McFarland offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 65** by striking everything below the enacting clause and substituting the following:

SECTION 1. The Code of Criminal Procedure is amended by adding Chapter 59 to read as follows:

CHAPTER 59. FORFEITURE OF CONTRABAND

Art. 59.01. DEFINITIONS. In this chapter:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

- the Penal Code; (i) any first or second degree felony under
- or 32, Penal Code; or (ii) any felony under Chapters 29, 30, 31,
- (iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);
- (B) used or intended to be used in the commission of:
- (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act); or
- (ii) any felony under Chapter 483, Health and Safety Code;
- (C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision; or
- (D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision.
- (3) "Interest holder" means the bona fide holder of a perfected lien or a perfected security interest in property.
- (4) "Law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.
- (5) "Owner" means a person who claims an equitable or legal ownership interest in property.
- (6) "Seizure" means the restraint of property by a peace officer under Article 59.03(a) or (b) of this code, whether the officer restrains the property by physical force or by a display of the officer's authority.
- Art. 59.02. FORFEITURE OF CONTRABAND. (a) Property that is contraband is subject to seizure and forfeiture under this chapter.
- (b) Any property that is contraband other than property held as evidence in a criminal investigation or a pending criminal case, money, a negotiable instrument, or a security that is seized under this chapter may be replevied by the owner or interest holder of the property, on execution of a good and valid bond with sufficient surety in a sum equal to the appraised value of the property replevied. The bond may be approved as to form and substance by the court after the court gives notice of the bond to the authority holding the seized property. The bond must be conditioned:
- (1) on return of the property to the custody of the state on the day of hearing of the forfeiture proceedings; and
- (2) that the interest holder or owner of the property will abide by the decision that may be made in the cause.
- (c) An owner or interest holder's interest in property may not be forfeited under this chapter if the owner or interest holder:
- (1) acquired and perfected the interest before or during the act or omission giving rise to forfeiture or, if the property is real property, he acquired an ownership interest, security interest, or lien interest before a lis pendens notice was filed under Article 59.04(g) of this code; and
- (2) did not know or should not reasonably have known of the act or omission giving rise to the forfeiture or that it was likely to occur at or before the time of acquiring and perfecting the interest or, if the property is real property, at or before the time of acquiring the ownership interest, security interest, or lien interest.
- (d) On motion by any party or on the motion of the court, after notice in the manner provided by Article 59.04 of this code to all known owners and interest holders of property subject to forfeiture under this chapter, and after a hearing on the matter, the court may make appropriate orders to preserve and maintain the

value of the property until a final disposition of the property is made under this chapter, including the sale of the property if that is the only method by which the value of the property may be preserved until final disposition.

(e) Any property that is contraband and has been seized by the institutional division of the Texas Department of Criminal Justice shall be forfeited to the institutional division under the same rules and conditions as for other forfeitures.

(f) An individual, firm, corporation, or other entity insured under a policy of title insurance may not assert a claim or cause of action on or because of the policy if the claim or cause of action is based on forfeiture under this chapter and, at or before the time of acquiring the ownership of real property, security interest in real property, or lien interest against real property, the insured knew or reasonably should have known of the act or omission giving rise to the forfeiture or that the act or omission was likely to occur.

Art. 59.03. SEIZURE OF CONTRABAND. (a) Property subject to forfeiture under this chapter may be seized by any peace officer under authority of a search warrant.

(b) Seizure of property subject to forfeiture may be made without warrant if:
(1) the owner, operator, or agent in charge of the property knowingly consents;

(2) the seizure is incident to a search to which the owner, operator, or agent in charge of the property knowingly consents;

(3) the property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding under this chapter; or

(4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

(c) A peace officer who seizes property under this chapter has custody of the property, subject only to replevy under Article 59.02 of this code or an order of a court. A peace officer who has custody of property shall provide the attorney representing the state with a sworn statement that contains a schedule of the property seized, an acknowledgment that the officer has seized the property, and a list of the officer's reasons for the seizure. Not later than 72 hours after the seizure, the peace officer shall:

(1) place the property under seal;

(2) remove the property to a place ordered by the court; or

(3) require a law enforcement agency of the state or a political subdivision to take custody of the property and move it to a proper location.

Art. 59.04. NOTIFICATION OF FORFEITURE PROCEEDING. (a) If a peace officer seizes property under this chapter, the attorney representing the state shall commence proceedings under this section not later than the 30th day after the date of the seizure.

(b) A forfeiture proceeding commences under this chapter when the attorney representing the state files a notice of the seizure and intended forfeiture in the name of the state with the clerk of the district court in the county in which the seizure is made. The attorney representing the state must attach to the notice the peace officer's sworn statement under Article 59.03 of this code. The attorney representing the state shall cause certified copies of the notice to be served on the following persons in the same manner as provided for the service of process by citation in civil cases:

(1) the owner of the property; and

(2) any interest holder in the property.

(c) If the property is a motor vehicle, and if there is reasonable cause to believe that the vehicle has been registered under the laws of this state, the attorney representing the state shall ask the State Department of Highways and Public

Transportation to identify from its records the record owner of the vehicle and any interest holder.

(d) If the property is a motor vehicle and is not registered in this state, the attorney representing the state shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed in another state. If the vehicle is licensed in a state that has a certificate of title law, the attorney representing the state shall request the appropriate agency of that state to identify the record owner of the vehicle and any interest holder.

(e) If a financing statement is required by law to be filed to perfect a security interest affecting the property, and if there is reasonable cause to believe that a financing statement has been filed, the attorney representing the state who commences the proceedings shall ask the appropriate official designated by Chapter 9, Business & Commerce Code, to identify the record owner of the property and the person who is an interest holder.

(f) If the property is an aircraft or a part of an aircraft, and if there is reasonable cause to believe that a perfected security instrument affects the property, the attorney representing the state shall request an administrator of the Federal Aviation Administration to identify from the records of that agency the record owner of the property and the holder of the perfected security instrument.

(g) If the property is real property, the attorney representing the state, not later than the third day after the date proceedings are commenced, shall file a lis pendens notice describing the property with the county clerk of each county in which the property is located.

(h) For all other property subject to forfeiture, if there is reasonable cause to believe that a perfected security instrument affects the property, the attorney representing the state shall make a good faith inquiry to identify the holder of the perfected security instrument.

(i) The attorney representing the state who commences the proceedings shall cause the owner and any interest holder to be named as a party and to be served with citation as provided by the Texas Rules of Civil Procedure.

(j) A person who was in possession of the property at the time it was seized shall be made a party to the proceeding.

(k) If no person was in possession of the property at the time it was seized, and if the owner of the property is unknown, the attorney representing the state shall file with the clerk of the court in which the proceedings are pending an affidavit stating that no person was in possession of the property at the time it was seized and that the owner of the property is unknown. The clerk of the court shall issue a citation for service by publication addressed to "The Unknown Owner of," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. The citation must contain the other requisites prescribed by and be served as provided by Rules 114, 115, and 116, Texas Rules of Civil Procedure.

(l) Proceedings commenced under this chapter may not proceed to hearing unless the judge who is to conduct the hearing is satisfied that this article has been complied with and that the attorney representing the state will introduce into evidence at the hearing any answer received from an inquiry required by Subsections (c)-(h) of this article.

Art. 59.05. FORFEITURE HEARING. (a) All parties must comply with the rules of pleading as required in civil suits.

(b) All cases under this chapter shall proceed to trial in the same manner as in other civil cases. The state has the burden of proving by a preponderance of the evidence that property is subject to forfeiture.

(c) It is an affirmative defense to forfeiture under this chapter of property belonging to the spouse of a person whose acts gave rise to the seizure of community property that, because of an act of family violence, as defined by Section 71.01, Family Code, the spouse was unable to prevent the act giving rise to the seizure.

(d) A final conviction for an underlying felony is not a requirement for forfeiture under this chapter. An owner or interest holder may present evidence of a dismissal or acquittal of an underlying felony in a forfeiture proceeding.

(e) If the court finds that all or any part of the property is subject to forfeiture, the judge shall forfeit the property to the state, with the attorney representing the state as the agent for the state, except that if the court finds that the nonforfeitable interest of an interest holder in the property is valued in an amount greater than or substantially equal to the present value of the property, the court shall order the property released to the interest holder. If the court finds that the nonforfeitable interest of an interest holder is valued in an amount substantially less than the present value of the property and that the property is subject to forfeiture, the court shall order the property forfeited to the state with the attorney representing the state acting as the agent of the state, and making necessary orders to protect the nonforfeitable interest of the interest holder. On final judgment of forfeiture, the attorney representing the state shall dispose of the property in the manner required by Article 59.06 of this code.

Art. 59.06. DISPOSITION OF FORFEITED PROPERTY. (a) All forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be distributed as follows:

(1) to any interest holder to the extent of the interest holder's nonforfeitable interest; and

(2) the balance, if any, after deductions of all storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.

(b) If a local agreement exists between the attorney representing the state and law enforcement agencies, the attorney representing the state may transfer the property to law enforcement agencies to maintain, repair, use, and operate the property for official purposes if the property is free of any interest of an interest holder. The agency receiving the forfeited property may purchase the interest of an interest holder so that the property can be released for use by the agency. The agency receiving the forfeited property may maintain, repair, use, and operate the property with money appropriated for current operations. If the property is a motor vehicle subject to registration under the motor vehicle registration laws of this state, the agency receiving the forfeited vehicle is considered to be the purchaser and the certificate of title shall issue to the agency. The agency at any time may transfer the property to a municipal or county law enforcement agency for the use of that agency.

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited according to the terms of the agreement into one or more of the following funds:

(1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;

(2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes;

(3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or

(4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to audit provisions established under this article. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded. The head of the agency or attorney representing the state may not use the existence of an award to increase a salary, expense, or allowance for an employee of the attorney or agency who is budgeted by the commissioners court or governing body unless the commissioners court or governing body first approves the expenditure.

(e) On the sale of contraband under this article, the appropriate state agency shall issue a certificate of title to the recipient if a certificate of title is required for the property by other law.

(f) A final judgment of forfeiture under this chapter perfects the title of the state to the property as of the date that the contraband was seized or the date the forfeiture action was filed, whichever occurred first, except that if the property forfeited is real property, the title is perfected as of the date a notice of lis pendens is filed on the property.

(g) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the receipt and disbursement of all such proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. Certified copies of the audit shall be delivered to the attorney general and to the governor no later than 30 days after the audit is completed.

(h) If an attorney representing the state or a law enforcement agency receives and retains proceeds for the use of the office or agency in an action under this chapter arising from one incident or investigation and those proceeds exceed 150 percent of the annual budget of that attorney or agency for the expenditure of proceeds awarded under this chapter, the attorney or the head of the agency shall forward the amount in excess of 150 percent to the state treasurer. The community corrections account is established in the state treasury. The state treasurer shall deposit funds received under this subsection in the community corrections account. The legislature may appropriate funds from the community corrections account for the purpose of making payments of state aid under Section 11(a)(3), Article 42.13, Code of Criminal Procedure.

Art. 59.07. IMMUNITY. This chapter does not impose any additional liability on any authorized state, county, or municipal officer engaged in the lawful performance of the officer's duties.

Art. 59.08. DEPOSIT OF MONEY PENDING DISPOSITION. (a) If money that is contraband is seized, the attorney representing the state may deposit the money in an interest-bearing bank account in the jurisdiction of the attorney representing the state until a final judgment is rendered concerning the contraband.

(b) If a final judgment is rendered concerning contraband, money that has been placed in an interest-bearing bank account under Subsection (a) of this article shall be distributed in the same manner as proceeds are distributed under Article 59.06 of this code, with any interest being distributed in the same manner and used for the same purpose as the principal.

Art. 59.09. RIGHT TO ATTORNEY NOT TO BE ABRIDGED. This chapter is not intended to abridge an accused person's right to counsel in a criminal case.

Art. 59.10. ELECTION OF LAWS. If property is subject to forfeiture under this chapter and under any other law of this state, the attorney representing the state may bring forfeiture proceedings under either law.

SECTION 2. Section 18.01, Code of Criminal Procedure, is amended by adding Subsections (g) and (h) to read as follows:

(g) A search warrant may not be issued under Subdivision (12), Article 18.02, of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause that the specifically described property or items that are to be searched for or seized constitute contraband as defined in Article 59.01 of this code and are located at or on the particular person, place, or thing to be searched.

(h) Only a judge of a municipal court of record who is an attorney licensed by the state or a judge of a statutory county court, district court, the court of criminal appeals, or the supreme court may issue a warrant under Subdivision (12), Article 18.02, of this code.

SECTION 3. Article 18.02, Code of Criminal Procedure, is amended to read as follows:

Art. 18.02. GROUNDS FOR ISSUANCE. A search warrant may be issued to search for and seize:

- (1) property acquired by theft or in any other manner which makes its acquisition a penal offense;
- (2) property specially designed, made, or adapted for or commonly used in the commission of an offense;
- (3) arms and munitions kept or prepared for the purposes of insurrection or riot;
- (4) weapons prohibited by the Penal Code;
- (5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;
- (6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;
- (7) drugs kept, prepared, or manufactured in violation of the laws of this state;
- (8) any property the possession of which is prohibited by law;
- (9) implements or instruments used in the commission of a crime;
- (10) property or items, except the personal writings by the accused, constituting evidence of an offense of constituting evidence tending to show that a particular person committed an offense; [or]
- (11) persons; or
- (12) contraband subject to forfeiture under Chapter 59 of this code.

SECTION 4. Article 18.17(a), Code of Criminal Procedure, is amended to read as follows:

(a) All unclaimed or abandoned personal property of every kind, other than contraband subject to forfeiture under Chapter 59 of this code and [except] whiskey, wine and beer, seized by any peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for sale to the purchasing agent of the municipality or county in which the property was seized. If a peace officer of a municipality seizes the property, the peace officer shall deliver the property to the purchasing agent of the municipality. If any other peace officer seizes the property the peace officer shall deliver the property to the purchasing agent of

the county. If the county has no purchasing agent, then such property shall be sold by the sheriff of the county.

SECTION 5. (a) Section 481.159, Health and Safety Code, is amended to read as follows:

Sec. 481.159. DISPOSITION OF CONTROLLED SUBSTANCE, RAW MATERIAL, OR DRUG PARAPHERNALIA. (a) If a district court orders the forfeiture of a controlled substance, raw material, or drug paraphernalia under Chapter 59, Code of Criminal Procedure, the court shall also order a law enforcement agency to:

(1) retain the property for its official purposes, including use in the investigation of offenses under this chapter;

(2) deliver the property to a government agency or department for official purposes;

(3) deliver the property to a person authorized by the court to receive it;

(4) deliver the property to a person authorized by the director to receive it for a purpose described by Section 481.065(a); or

(5) destroy the property that is not otherwise disposed of in the manner prescribed by Section 481.160.

(b) The district court may not require the Department of Public Safety to receive, analyze, or retain controlled substances or raw materials forfeited to a law enforcement agency other than the department.

(c) In order to ensure that controlled substances or raw materials are not diluted, substituted, or tampered with while being used in the investigation of offenses under this chapter, by enforcement agencies using substances or materials for this purpose shall:

(1) employ a qualified individual to conduct qualitative and quantitative analyses of the substances or materials before and after their use in an investigation;

(2) maintain the substances or materials in a secure storage area accessible only to the law enforcement agency head and the individual responsible for analyzing, preserving, and maintaining security over the substances or materials; and

(3) maintain a log documenting:

(A) the date of issue, date of return, type, amount, and concentration of substances or materials used in an investigation; and

(B) the signature and the printed or typed name of the peace officer to whom the material or substance was issued and the signature and the printed or typed name of the individual issuing the substance or material.

(d) A law enforcement agency may adopt a written policy with more stringent requirements than those required by Subsection (c). The Department of Public Safety may enter and inspect, in accordance with Section 481.181, a location at which an agency maintains records, controlled substances, or raw materials as required by this section.

(e) If a law enforcement agency uses controlled substances or raw materials in the investigation of an offense under this chapter and the substance or material has been transported across state lines before the forfeiture, the agency shall cooperate with a federal agency in the investigation if requested to do so by the federal agency.

(b) In addition to the new changes made in law made by this section relating to the use of certain property forfeited under Chapter 59, Code of Criminal Procedure, this section conforms certain provisions of the Health and Safety Code relating to the disposition of controlled substances, raw material, and drug paraphernalia to changes made in the law by Section 1 of House Bill No. 989, Acts of the 71st Legislature, Regular Session, 1989.

(c) Section 1 of House Bill No. 989, Acts of the 71st Legislature, Regular Session, 1989, is repealed.

SECTION 6. Sections 481.151, 481.153, 481.154, 481.155, 481.156, 481.157, and 481.158, Health and Safety Code, are repealed.

SECTION 7. The change in law made by Sections 1, 2, 3, 4, and 5 of this Act applies only to property that becomes contraband on or after the effective date of this Act. Property that became contraband before that date is covered by the law in effect when it became contraband, and the former law is continued in effect for this purpose.

SECTION 8. This Act takes effect September 1, 1989.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator Washington offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to C.S.H.B. 65 in Section 1 of the bill by striking Article 59.05(d), Code of Criminal Procedure, and substituting the following:

(d) A final conviction for an underlying felony is not a requirement for forfeiture under this chapter. An owner or interest holder may present evidence of a dismissal or acquittal of an underlying felony in a forfeiture proceeding, and evidence of an acquittal raises a presumption that the property or interest that is the subject of the hearing is nonforfeitable. This presumption can be rebutted by evidence that the owner or interest holder knew or should have known that the property was contraband.

The amendment was read and was adopted viva voce vote.

Senator Washington offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 3

Amend Floor Amendment No. 1 to C.S.H.B. 65 in Section 2 of the bill by striking Article 18.01(g), Code of Criminal Procedure, and substituting the following:

(g) A search warrant may not be issued under Subdivision (12), Article 18.02, of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause that a specific felony offense has been committed and that the specifically described property or items that are to be searched for or seized constitute contraband as defined in Article 59.01 of this code and are located at or on the particular person, place, or thing to be searched.

The amendment was read and was adopted viva voce vote.

Senator Dickson offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 4

Amend Floor Amendment No. 1 to C.S.H.B. 65 as follows:

Amend Section 1 on page 11 by striking paragraph (h) of Article 59.06 in its entirety.

The amendment was read and was adopted viva voce vote.

Question recurring on adoption of Floor Amendment No. 1 as amended, the amendment was adopted viva voce vote.

On motion of Senator Whitmire and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 65 ON THIRD READING**

Senator Whitmire moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 65 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Green.

The bill was read third time and was passed viva voce vote.

BILL AND RESOLUTION SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bill and resolution:

H.B. 126

H.C.R. 36

SENATE RESOLUTION 203

Senator Parker offered the following resolution:

WHEREAS, There is great need for an investigation of the rate-making and oversight policies for workers' compensation insurance policies; now, therefore be it

RESOLVED, That the Senate of the State of Texas, 71st Legislature, 1st Called Session, hereby create a special interim committee to conduct an investigation of the rate-making and oversight policies for workers' compensation insurance policies; and, be it further

RESOLVED, That the committee be composed of five members of the Senate to be appointed by the President of the Senate; and, be it further

RESOLVED, That the committee complete its investigation and report not later than September 30, 1989; and, be it further

RESOLVED, That the committee make a complete report, including findings and recommendations, to the 71st Legislature when it next convenes.

The resolution was read.

On motion of Senator Parker and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

MOTION IN WRITING

Senator Brooks offered the following Motion in Writing:

Mr. President:

I move that the President be authorized to appoint a committee of five (5) Members to notify the Governor that the Senate has completed its labors and is ready to adjourn sine die.

BROOKS

The Motion in Writing was read and was adopted viva voce vote.

Accordingly, the President appointed the following Committee to Notify the Governor: Senators Bivins, Sims, Ratliff, Glasgow and Zaffirini.

MOTION IN WRITING

Senator Brooks offered the following Motion in Writing:

Mr. President:

I move that the President be authorized to appoint a committee of five (5) Members to notify the House of Representatives that the Senate has completed its labors and is ready to adjourn sine die.

BROOKS

The Motion in Writing was read and was adopted viva voce vote.

Accordingly, the President appointed the following Committee to Notify the House of Representatives: Senators Uribe, Carriker, Barrientos, Whitmire and Armbrister.

HOUSE OF REPRESENTATIVES NOTIFIED

The Committee to Notify the House of Representatives that the Senate had adjourned sine die appeared at the Bar of the Senate and Senator Uribe for the Committee reported to the Senate they had completed their assigned task.

The President discharged the Committee.

GOVERNOR NOTIFIED

The Committee to Notify the Governor that the Senate had adjourned sine die appeared at the Bar of the Senate and Senator Bivins for the Committee reported to the Senate they had completed their assigned task.

The President discharged the Committee.

MOTION TO ADJOURN SINE DIE

At 9:15 p.m. Senator Brooks moved that the Senate of the Seventy-First Legislature, First Called Session, adjourn sine die upon the completion of administrative duties.

The motion prevailed.

MESSAGE FROM THE HOUSE

House Chamber
July 19, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House suspended all necessary rules and concurred in revenue dedication portion of Senate amendments to **H.B. 65** by a record vote of 118 Ayes, 1 Nay, 1 Present-not voting, and concurred in the remainder by a non-record vote.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

BILL AND RESOLUTION SIGNED

The President announced the signing, after the caption had been read, the following enrolled bill and resolution:

H.B. 65

S.C.R. 5

CONGRATULATORY RESOLUTIONS

H.C.R. 36 - (Glasgow): Commending Gregory Scott Graham for risking his own life to spare the lives of others.

S.R. 197 - By Montford: Commending W. O. Shafer on his career of accomplishment and achievement in the legal profession.

S.R. 198 - By Truan: Extending congratulations to Dr. Manuel L. Ibanez as he embarks on his new career as president of Texas A&I University in Kingsville.

S.R. 199 - By Sims: Extending congratulations to Mr. and Mrs. H. C. Stringer of Midland on their 50th wedding anniversary.

S.R. 200 - By Sims: Extending congratulations to Jack and Carmen Ammer of Monahans on their 60th wedding anniversary.

S.R. 201 - By Caperton: Recognizing and applauding Eileen Crain Sullivan for her generosity and public spirit as exemplified by her donation of Fort Boggy State Park.

S.R. 204 - By Truan: Extending congratulations to the working people of the Coastal Bend area and wishing them an outstanding celebration on Labor Day, 1989.

S.R. 205 - By Glasgow: Commending the immeasurable contributions of Pam Beachley and Bobby Gierisch to the Joint Select Committee on Workers' Compensation during the interim and as Special Counsel to the 71st Texas Legislature during its Regular and 1st Called Sessions.

S.R. 206 - By Henderson: Extending congratulations to J. P. Villont of Katy on achieving the rank of Eagle Scout.

S.R. 207 - By Henderson: Extending congratulations to Randal M. Whiddon on attaining the Gold Medal of Achievement from the Royal Rangers.

ADJOURNMENT SINE DIE

The President announced that the hour for final adjournment of the First Called Session of the Seventy-First Legislature had arrived.

Senator Brooks, at 10:40 p.m., July 19, 1989, moved that the Senate stand adjourned sine die in accordance with a motion previously adopted.

The President declared the First Called Session of the Seventy-First Legislature adjourned sine die.

APPENDIX

Signed by Governor
(July 18, 1989)

S.B. 27 (Effective immediately)
H.B. 32 (Effective immediately)
S.C.R. 1
S.C.R. 11
S.C.R. 13
S.C.R. 14
H.C.R. 18
H.C.R. 19
H.C.R. 22
H.C.R. 30

(July 21, 1989)

S.B. 62 (Effective immediately)
S.C.R. 6
S.C.R. 7
S.C.R. 16
S.C.R. 17
S.C.R. 19
H.C.R. 1
H.C.R. 7
H.C.R. 15
H.C.R. 33
H.C.R. 35
H.C.R. 36

Sent to Comptroller
(July 19, 1989)

S.B. 59
S.B. 86

Sent to Governor
(July 19, 1989)

S.B. 20

Signed by Governor
(July 25, 1989)

S.C.R. 8

Sent to Governor
(July 27, 1989)

S.C.R. 5
S.B. 59
S.B. 86

Signed by Governor
(July 28, 1989)

S.C.R. 2

(August 2, 1989)

S.B. 21 (Effective September 1, 1989)
S.B. 23 (Effective immediately)
S.B. 28 (Effective October 18, 1989)
S.B. 45 (Effective November 1, 1989)
S.B. 50 (Effective immediately)
S.B. 53 (Effective January 1, 1990)
S.B. 57 (Effective November 1, 1989)
S.B. 59 (Effective September 1, 1989)
S.B. 67 (Effective November 1, 1989)
S.B. 75 (Effective immediately)
S.B. 80 (Effective September 1, 1989)
S.B. 86 (Effective immediately)
S.B. 91 (Effective October 18, 1989)
S.B. 96 (Effective immediately)
H.B. 25 (Effective October 18, 1989)
H.B. 26 (Effective September 1, 1989)
H.B. 40 (Effective immediately)
H.B. 52 (Effective October 18, 1989)
H.B. 63 (Effective September 1, 1989)
H.B. 64 (Effective October 18, 1989)
H.B. 67 (Effective October 18, 1989)
H.B. 82 (Effective October 18, 1989)
H.B. 94 (Effective October 18, 1989)
H.B. 95 (Effective September 1, 1989)
H.B. 99 (Effective October 18, 1989)
H.B. 103 (Effective September 1, 1989)
H.B. 114 (Effective October 18, 1989)
H.B. 123 (Effective September 1, 1989)
H.B. 128 (Effective October 18, 1989)
S.B. 20 (Effective November 1, 1989)
S.B. 29 (Effective January 1, 1990)
S.B. 30 (Effective October 18, 1989)
S.B. 32 (Effective October 18, 1989)
S.B. 64 (Effective November 1, 1989)
H.B. 28 (Effective October 18, 1989)
H.B. 29 (Effective immediately)
H.B. 65 (Effective October 18, 1989)
H.B. 101 (Effective September 1, 1989)
H.B. 116 (Effective October 18, 1989)
H.B. 126 (Effective October 18, 1989)
H.B. 131 (Effective October 18, 1989)

(August 3, 1989)

S.C.R. 5

**SENATE BILLS AND SENATE JOINT RESOLUTIONS,
AUTHORS OF****(In Alphabetical Order of Authors)**

(Note — See “History of Senate Bills” and “History of Senate Joint Resolutions” for History of Bills and Resolutions.)

ARMBRISTER, SENATOR KEN

S.B. 12 — Relating to the offense of and penalty for murder of an individual 14 years of age or younger.

S.B. 36 — Relating to the regulation of certain athlete agents.

S.B. 37 — Relating to the supplemental compensation paid to the judge of the 377th Judicial District.

S.B. 38 — Relating to the peace officer college loan program.

S.B. 58 — Relating to treatment of permits issued under certain federally authorized State programs.

S.B. 98 — Relating to the authority of navigation districts.

BARRIENTOS, SENATOR GONZALO

S.B. 26 — Relating to an emergency appropriation to the State Commission on Human Rights.

S.B. 54 — Relating to permitting the Department of Public Safety to charge fees for permits for sales and purchases of precursor chemicals and chemical laboratory apparatus.

S.B. 61 — Relating to establishing the Texas partnership and scholarship program.

S.B. 102 — Relating to the creation of the Williamson-Travis Counties Water Control and Improvement District No. 1.

BIVINS, SENATOR TEEL

S.B. 12 — Relating to the offense of and penalty for murder of an individual 14 years of age or younger.

S.B. 51 — Relating to property rights in, and the establishment of a wildlife management area along, certain river beds.

S.B. 64 — Relating solely to the transfer of governance, management and operation of West Texas State University from the board of regents of that institution to the board of regents of The Texas A&M University System.

S.B. 91 — Relating to the county courts at law in Randall County.

BROOKS, SENATOR CHET

S.B. 1 — Relating to the reform of the workers' compensation system; to the creation, powers and duties of the Texas Workers' Compensation Commission; to work safety; making appropriations; providing criminal and administrative penalties; and providing for taxes and fees.